

**DECISION**



*17518*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-202366

DATE: March 26, 1981

MATTER OF: Kathryn A. Rogerson

**DIGEST:**

1. [Protest against cancellation of IFB] is untimely where protester was notified of cancellation by statement in resolicitation, which was issued approximately one month prior to receipt of protest by GAO.
2. Protest that bid package under resolicitation improperly included abstract of bids from canceled IFB, is untimely since it concerns defect on face of solicitation yet was not filed with GAO prior to bid opening.
3. On resolicitation, agency may not preclude from competing those bidders who submitted late or nonresponsive bids under prior, canceled IFB, in view of general policy directing agency to obtain maximum practicable competition.

Kathryn A. Rogerson protests the cancellation of invitation for bids (IFB) No. 14R4-26 (IFB-26) and the resolicitation of this requirement under IFB No. 14R4-29 (IFB-29), by the Forest Service, U.S. Department of Agriculture.

*not in  
personnel  
name  
field*

*016147*

**114732**

IFB-26, issued November 19, 1980, was for camp-ground clean up and maintenance services at the Sawtooth National Forest, Twin Falls, Idaho. Of the four responsive bids received by the December 19 opening date, the protester's bid was second lowest. The Forest Service apparently determined that the low bidder could not satisfactorily perform at its bid price, but instead of rejecting that bid and awarding the contract to the protester as the second low bidder, it attributed the unacceptably low price to a perceived ambiguity in the Schedule of Items and on that basis canceled the IFB. IFB-29, resoliciting the agency's requirement, was issued February 3, 1981, with bid opening scheduled for March 2. We received the protest on March 5.

The protester advances three bases of protest: (1) IFB-26 was not ambiguous or otherwise defective and the cancellation was therefore improper; (2) the bid abstract from IFB-26 should not have been included in the bid package for IFB-29; and (3) only those four bidders which submitted timely and responsive bids under IFB-26 should have been permitted to compete under IFB-29. We find the first two bases of protest untimely filed. Because we believe it clear from the protester's submission to our Office that the third basis for the protest is without legal merit, we have reached this decision without requiring a report from the Forest Service. See Seacoast Trucking & Moving, B-200315, September 30, 1980, 80-2 CPD 235.

Our Bid Protest Procedures provide that protests based on alleged improprieties in any type of solicitation which are apparent prior to bid opening must be filed in our Office prior to bid opening in order to be considered timely. 4 C.F.R. § 20.2(b)(1)(1980). All other protests must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2). This latter timeliness standard governs with regard to the protester's first allegation. The protester was notified of the cancellation of IFB-26 by a statement entitled "Notice To Prospective Bidders," issued on February 3 together with IFB-29. Thus, a protest against the cancellation, in order

to be deemed timely filed, should have been submitted within 10 working days of the protester's receipt of IFB-29. We did not receive the subject protest until March 5, however, and it is therefore clearly untimely and not for consideration on the merits. See Consolidated Photocopy Company, Inc., B-196136, January 26, 1980, 80-1 CPD 80.

The protester's second point of protest is also untimely. Its contention that the bid abstract from the canceled solicitation should not have been included in the bid package for IFB-29 clearly concerns an impropriety in the solicitation itself. Since this alleged defect was apparent on the face of the IFB, it should have been protested prior to the March 2 bid opening. As noted, the protest was not received in our Office until March 5 and thus, it is untimely as to this issue. In any event, the protest indicates that the Forest Service may have released the prior bid results with the resolicitation essentially as a matter of fairness to all potential bidders since the bid prices (which were public information) were already known to some firms.

The protester also maintains that the competition for IFB-29 was improperly opened to all bidders rather than being restricted to the four firms which submitted timely and responsive bids on IFB-26. This was unfair, it is submitted, since it allowed new bids based on the bid abstract for IFB-26, and because it allowed participation by firms which had submitted late or nonresponsive bids under IFB-26 and which would have been ineligible for award under IFB-26.

A basic policy which applies to purchases by the Forest Service is that they "be made on a competitive basis to the maximum practicable extent." Federal Procurement Regulations § 1-1.301-1 (1964 ed. amend. 169). In view thereof, we know of no basis upon which the Forest Service properly could have excluded from the resolicitation firms whose bids were late or non-responsive to the first IFB, as the protester urges.

B-202366

4

The protest is dismissed in part and denied in part.

*Milton J. Fowler*

Acting Comptroller General  
of the United States